Shambaugh and Son, L.P. *and* International Association of Heat and Frost Insulators and Allied Workers, Local 41. Cases 25–CA–141001 and 25–CA–145447

June 10, 2016

DECISION AND ORDER

BY MEMBERS MISCIMARRA, HIROZAWA, AND MCFERRAN

On September 17, 2015, Administrative Law Judge Charles J. Muhl issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief. The Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions, to amend the remedy, and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Shambaugh & Son, L.P., Fort Wayne, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(b).

"(b) Make Ryan Wiersema whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the judge's decision, as amended in this decision."

2. Substitute the following for paragraph 2(c).

"(c) Compensate Ryan Wiersema for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 25, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s)."

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. June 10, 2016

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In the absence of exceptions, we adopt the judge's findings that the Respondent violated Sec. 8(a)(1) of the Act by interrogating job applicant Joe Koontz concerning his union membership, activities, and sympathies, and by requiring Koontz to provide written evidence of his withdrawal from the Union to receive consideration for employment.

In adopting the judge's finding that the Respondent violated Sec. 8(a)(3) and (1) by refusing to consider for hire and refusing to hire Ryan Wiersema, we rely on the judge's finding of pretext and the following additional evidence of animus: (1) the 8(a)(1) violations, to which there are no exceptions; and (2) the timing of the Respondent's refusal to hire Wiersema, within a few months of witnessing him participate in a bannering campaign at the Respondent's headquarters. Because we adopt the judge's credibility finding that Wiersema did not threaten employee Shepherd while holding a knife, we do not reach the question of whether the threat would be relevant if it had been made.

Member Miscimarra disagrees with the judge's suggestion that, when an employer proffers a false reason for refusing to hire a job applicant, the General Counsel necessarily satisfies his burden of proving unlawful motivation. Although Member Miscimarra believes that stating a false reason for an adverse employment action may adversely affect credibility and in some circumstances may support a finding that the real reason is an unlawful one, depending on the rest of the evidence, it does not necessarily prove that the respondent was motivated by unlawful considerations. See *Libertyville Toyota*, 360 NLRB No. 141, slip op. at 11 fn. 10 (2014) (Member Miscimarra, concurring in part and dissenting in part), enfd. sub nom. *AutoNation, Inc. v. NLRB*, 801 F.3d 767 (7th Cir. 2015).

[2] In accordance with our decision in *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016), we shall modify the judge's recommended tax compensation and Social Security reporting remedy. We shall modify the judge's recommended Order and substitute a new notice to reflect this remedial change.

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT coercively interrogate job applicants about their union membership, activities, and sympathies.

WE WILL NOT require applicants for employment to provide written evidence of their withdrawal from the Union in order to receive consideration for employment.

WE WILL NOT refuse to hire or consider for hire applicants for employment because of their union or other protected, concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Ryan Wiersema employment in the position in which he would have been hired in the absence of the discrimination against him, or, if that job no longer exists, in a substantially equivalent position, without prejudice to his seniority or any other rights or privileges he would have enjoyed.

WE WILL make Ryan Wiersema whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, less any net interim earnings, plus interest.

WE WILL compensate Ryan Wiersema for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 25, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to our unlawful refusal to hire Ryan Wiersema or consider him for hire, and, within 3 days thereafter, WE WILL notify him in writing that this has been done and that our unlawful conduct will not be used against him in any way.

SHAMBAUGH AND SON, L.P.

The Board's decision can be found at www.nlrb.gov/case/25–CA–141001 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

Raifael Williams, Esq., for the General Counsel.
William T. Hopkins, Jr., Esq. (Barnes & Thornburg LLP), of Fort Wayne, Indiana, for the Respondent.

DECISION

STATEMENT OF THE CASE

CHARLES J. MUHL, Administrative Law Judge. This case arises out of a salting campaign conducted by the International Association of Heat and Frost Insulators and Allied Workers, Local 41 (the Union) at Shambaugh and Son, L.P. (the Respondent). The General Counsel's complaint, which issued on March 31, 2015, is premised upon unfair labor practice charges and an amended charge filed by the Union on November 17, 2014, and January 30, 2015. The complaint alleges that the Respondent violated Section 8(a)(3) of the National Labor Relations Act (the Act), by refusing to hire, or consider for hire, Union Business Manager Ryan Wiersema since June 27, 2014, due to his union and protected, concerted activities. The complaint also alleges that the Respondent violated Section 8(a)(1) of the Act on September 18, 2014, by interrogating job applicants concerning their union membership, activities, and sympathies, as well as by requiring job applicants to provide written evidence of their withdrawal from the Union to receive consideration for employment. The Respondent denies that it violated the Act as alleged.

I conducted a trial on the complaint on July 7 and 8, 2015, in Fort Wayne, Indiana. Counsel for the parties filed post hearing briefs in support of their positions on August 12, 2015, which I have considered.

The only matter in dispute in this case is whether the Respondent's decision not to hire Wiersema was motivated by antiunion animus. The facts are intriguing, in light of the Respondent's asserted reason for not hiring Wiersema and the history between Wiersema and Dean Sheedy, the Respondent's project manager who made the decision. At the hearing, Sheedy contended that he refused to hire Wiersema in June 2014 because of alleged misconduct that Wiersema engaged in 7 years earlier, when the two worked together for a different employer. Sheedy claimed that Wiersema pulled a knife on and threatened to gut another employee.

As discussed fully herein and irrespective of whether

Wiersema actually made that threat, I do not credit Sheedy's testimony that he relied upon Wiersema's alleged 2007 misconduct when declining to hire him in June 2014. I therefore conclude that the Respondent's asserted reason for not hiring Wiersema is a pretext, sufficient to establish its antiunion animus. Because the Respondent's asserted reason is a pretext, the General Counsel has established that Wiersema's union activity contributed to the refusal to hire him and the Respondent is precluded from establishing that it would not have hired Wiersema absent his union activity.

On the entire record, including my observation of the demeanor of witnesses, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a mechanical contractor in the construction industry, operating a facility in Fort Wayne, Indiana. In conducting its business operations in the last 12 months, the Respondent purchased and received, at its Fort Wayne facility, goods valued in excess of $50,000 directly from points outside the State of Indiana. Accordingly, and at all material times, I find that the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and is subject to the Board's jurisdiction, as the Respondent admits in its answer to the complaint. The Respondent also admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Respondent provides mechanical, electrical, plumbing, fire protection, and engineering and design services. It is owned by a larger company called EMCOR. William Meyer is a senior vice president and Gary Perkey is the vice president of the mechanical division.

In December 2012, the Respondent created a new insulation division within mechanical to perform the insulation of pipe, ductwork, heating, and cooling. The Respondent hired Dean Sheedy as a project manager for that division. Included in Sheedy's job duties is the responsibility for hiring mechanical insulators to perform the insulation work. Since December 2012, the Respondent has employed between 7 and 10 mechanical insulators. Although much of the Respondent's overall work force is unionized, the mechanical insulators are not represented by a union.

Sheedy and Ryan Wiersema knew one another long before June 2014.[1] Prior to 2008, Wiersema worked as a mechanical insulator for several different employers. In 2007, Sheedy was employed as a project manager and supervised Wiersema at NEDRA Corporation, a contractor which also performed mechanical insulation work. The Union involved here represented NEDRA's mechanical insulators, including Wiersema. On April 1, 2008, Wiersema resigned his NEDRA job and began working as an organizer for the Union. However, Sheedy and Wiersema remained in regular contact thereafter.

[1] All dates hereinafter are in 2014, unless otherwise specified.

A. The Union's Organizing Efforts at Shambaugh Prior to 2014

The Union began its attempts to organize the Respondent's mechanical insulators in April 2013. At that time, Sheedy told Wiersema he was having problems finding skilled manpower for the insulation division and felt the problem could be addressed with a unionized work force.

In the summer of 2013, Dave Marvin, the then-business manager of the Union, met with Meyer and Perkey to discuss a collective-bargaining agreement for the insulators. Marvin asked Meyer why all his employees were unionized except the insulators and why Meyer would not sign the Union's contract. Meyer said he needed a labor package that would allow him to compete with union and nonunion insulation companies. Marvin raised the possibility of crew mixes, or changing the percentage of lower-cost apprentices permissible on a job, as well as of union subsidies for job bids. Meyer expressed his concerns with unfunded pensions. He also told Marvin that he wanted the Union to consider maintaining the employees on the Respondent's health and 401(k) plans.

On July 16, 2013, Wiersema sent an email to Meyer and Perkey apologizing for Marvin's behavior at the meeting and his traditionalist approach to bargaining. (GC Exh. 2.) He also expressed hope that the parties could find a way to mutually benefit one another in the future. Wiersema sent the email in response to hearing from Sheedy that the meeting had not gone well and Marvin insisted that the Respondent accept the Union's existing collective-bargaining agreement with other insulation companies.

In September 2013, Meyer met with Wiersema and Tommy Williams, a regional organizer for the Union. Meyer told them the unionized insulator market in Fort Wayne appeared to be dying and was not competitive in the "bid room." He noted that the unionized NEDRA Corporation was going out of business. He stated that he did not think he could get his boss to sign onto another collective-bargaining agreement.[2] Williams and Wiersema expressed a willingness to look at alternative approaches in a contract, and left the meeting by saying they would see what they could come up with.

On October 2, 2013, Wiersema again sent an email to Meyer thanking him for meeting and saying he looked forward to a future meeting where the Union could propose an agreement. (R. Exh. 2.) However, the parties never met again and the Union never offered a contract proposal.

On December 14, 2013, Wiersema succeeded Marvin as the Union's business manager.

Wiersema's Discussions with Sheedy About Employment with the Respondent

At some point late in 2013, Wiersema and Sheedy met at a restaurant. Wiersema vented concerning his job with the Union and the two discussed the possibility of Wiersema pursuing jobs with the Respondent. Sheedy told him that, if he saw something come up, he would let Wiersema know.

[2] Wiersema testified that Meyer made this statement in the meeting. (Tr. 177.) Although Meyer testified at the hearing about the meeting, he did not deny making the statement. (Tr. 270–274.) Thus, Wiersema's testimony as to this statement is uncontroverted.

On February 18, Sheedy called Wiersema and told him that EMCOR, the Respondent's owner, had just posted an opening for a project manager in one of their divisions. He asked whether Wiersema would be interested in the job and offered to provide Wiersema with additional information if he was interested. When Wiersema said he would take a look at it, Sheedy described the job duties of the position, as well as the minimum experience and skills EMCOR was looking for.[3] (GC Exhs. 14 and 15.)

Later that same day, Sheedy and Wiersema exchanged text messages. Wiersema asked Sheedy to email him the job posting. Sheedy eventually advised Wiersema that he pulled the job up and it was an internal posting. He added that he "will inquire about it tho." (GC Exh. 6.)

The Union's Bannering of the Respondent Beginning in March 2014

About 2 weeks later on March 3, the Union began a bannering campaign against the Respondent. At different points between March 3 and the first or second week of July, the Union bannered at locations that included the Respondent's fabrication shop and its headquarters, both in Fort Wayne. The Union's banner stated "Notice to the public: Shambaugh & Son does not employ members of or have a contract with Local 41." During the first couple of weeks of bannering, Wiersema participated from 6 a.m. to 4 p.m. with a "Local 41" hat on. Thereafter, he participated on and off for a few weeks.

At the hearing, Sheedy admitted that he knew Wiersema was part of the Union's bannering at the Respondent's headquarters, which took place from June until the beginning of July. (Tr. 46–48, 102–103.) Meyer also admitted to being generally aware of the Union's bannering in the spring of 2014. (Tr. 274–275.) In addition, Wiersema observed Meyer driving through nearly every day while Wiersema was bannering at the Respondent's headquarters. Wiersema also saw Meyer and Perkey driving by on multiple occasions while he was bannering at the Respondent's fabrication shop. During this same timeframe, Wiersema spoke to certain of the Respondent's insulators about organizing and sought authorization card signatures. Meyer admitted to knowing this, although he could not recall when he became aware. (Tr. 279.)

Sheedy never again communicated with Wiersema after their February 18 text messages and the beginning of the Union's bannering on March 3.

A. Wiersema's June 9 Application for Employment with Tradesmen International

From December 2012 until June, Sheedy did not utilize any formal procedure to hire mechanical insulators and did not accept job applications from interested individuals. Rather, Sheedy told current insulators that he had openings and relied on them to advise people they knew through word-of-mouth. Sheedy would hire people where they had prior insulation experience and were friends of a current employee.

The Respondent altered that approach in June, when it entered into a contract with Tradesmen International, a temporary employment agency, to obtain mechanical insulators for its projects. Sheedy remained the individual responsible for determining who would be hired. The only criteria he gave Tradesmen for job applicants was that they needed at least some experience with insulating, without mandating a specific number of years. Sheedy was seeking to hire 3 to 4 mechanical insulators at that time.

On June 9, Wiersema searched the Tradesmen website and found a job posting for a mechanical insulator apprentice in Fort Wayne. The posting did not indicate that the job would be with Shambaugh. He filled out an application online, listing "Local 41" as his current employer since January 2002 and Marvin as his supervisor. (R. Exh. 3.) He also indicated he had 12 years of experience as an insulation installer. Wiersema listed his position with the Union as "mechanical insulator" and his job duties as installing insulation materials for HVAC systems, chilled water, domestic piping, duct, etc. He also stated his reason for leaving his last job was the lack of work in the Fort Wayne area.

On June 13, Wiersema interviewed with a Tradesmen representative. He ultimately was advised he was hired and would start work in 1 to 2 weeks. He was not told which employer he would be working with. On June 16, Wiersema emailed multiple forms of identification to Tradesmen that had been requested during his interview.[4] (GC Exh. 11.)

After Wiersema submitted his application, Joey Tippman, a representative at Tradesmen, called Sheedy on a date in June not specified in the record. Tippman advised Sheedy that one person had put in an application for work, he was unemployed, and he had previous experience in insulating. Tippman told Sheedy that the applicant was Wiersema. Sheedy advised Tippman he did not want to hire Wiersema.[5]

Tradesmen did not end up hiring Wiersema. Instead, on June 24, Tradesmen reposted the mechanical insulator job opening online. (GC Exh. 12.) On June 29, Tradesmen hired Michael Burdette as a temporary employee and Burdette went to work for the Respondent. (GC Exh. 4.) Burdette had prior

[3] Wiersema recorded this phone conversation and the recording and transcript of the conversation were entered into evidence at the hearing. The reference to "audio played" in the transcript was the audio recording of this conversation. (Tr. 46.)

[4] At the hearing, Counsel for the General Counsel properly identified GC Exhibits 11 and 12 on the record, but did not offer the exhibits into evidence, apparently through inadvertence. Neither party addressed this in their post hearing briefs. As no grounds exist for excluding the exhibits, I hereby receive them into evidence.

[5] Sheedy testified specifically that he told Tippman that Wiersema was employed by the Union, but he was not interested in Wiersema "for other reasons." (Tr. 39.) It is understandable that Sheedy would say Wiersema was employed by the Union, after Tippman stated Wiersema was unemployed. However, I find Sheedy's testimony thereafter contrived and unconvincing. It is implausible that Sheedy would say he was not hiring Wiersema "for other reasons," without then specifying to Tippman what those reasons were. This is especially so if, as claimed, the justification for his refusal to hire Wiersema was that Wiersema previously had threatened another employee. I further note that neither Tippman nor any other Tradesmen representative testified at the hearing, a curious absence. Thus, Sheedy's testimony is uncorroborated. Accordingly, I do not credit Sheedy's testimony that he told Tippman nothing more than he was not hiring Wiersema "for other reasons."

experience working as a mechanical insulator, but the record evidence does not establish the number of years of experience he had. Burdette was the only employee Tradesmen hired for the Respondent in June.

Tradesmen hired 5 additional temporary employees that were assigned to the Respondent from August 3 to September 7. (GC Exhs. 4 and 13.) They included Brian Carmichael and Kevin Vancamp on August 3; Keith Malott on August 24; Steven Roebuck on August 31; and Tyler Thacker on September 7. When Sheedy approved these individuals for hire, he was aware that they had at least some experience as mechanical insulators, but not the specific years of experience possessed by Carmichael, Vancamp, Roebuck, or Thacker. He knew that Malott had less than 5 years of experience.

In addition to Michael Burdette, the Respondent directly hired 4 permanent employees from September 2 to October 27. (GC Exh. 5.) They included Jared Hill on September 15; Mitchell Burdette on September 25; Andrew Krieg on October 27; and Jonathon Krieg on October 30. Sheedy knew that Jonathon Krieg had some level of prior experience, but Mitchell Burdette had none. He also was aware that Hill and Andrew Krieg had no experience, but an existing employee vouched for those two individuals. On September 26, the Respondent also converted Michael Burdette from a temporary to a permanent employee.

At the hearing, Wiersema testified that, had he been hired, he intended to work for Tradesmen and Shambaugh for as long as he possibly could. (Tr. 124–125.)

B. Sheedy's September Text Messages to Joe Koontz

On September 18, when Sheedy was in the midst of hiring additional mechanical insulators, Wiersema was having lunch with Joe Koontz, a member of the Union who is employed as an apprentice insulator for a different contractor. Koontz previously worked on a few projects for the Respondent. Wiersema asked Koontz if he would text Sheedy and ask if Sheedy would hire Koontz. Koontz agreed and the following text message exchange occurred, with all of Koontz's statements provided to him by Wiersema:

> Koontz: Hey do you have work
> Sheedy :Lots. Who is this
> Koontz: Little joe
> Sheedy: I thought u were still in the union
> Koontz: I wasn't able to get back in
> Sheedy: I thought u were back in the last time we talked. I had also herd (sic) u were
> Koontz: Did not work out. They said I had to (sic) many points from before. Missed one day and got kicked out. So you got anything for me
> Sheedy: What does your dad think of it
> Koontz: He don't care he's a road dog now
> Sheedy: Let me talk with my boss .. I will get back with u
> Koontz: Thanks dean
> Sheedy: No problem .. Do u have papers saying u were expelled from the union ?
> Koontz: I haven't got it in the mail yet

(Jt. Exh. 1.) Thereafter on September 22, Sheedy texted Koontz and told him he could put Koontz to work the next day.

C. The Incident Involving Wiersema at NEDRA in 2007

At the hearing, Sheedy testified that he did not hire Wiersema through Tradesmen in June 2014, due to an incident which occurred back in 2007 when both he and Wiersema were working for NEDRA Corporation on a jobsite for Concordia Seminary. (Tr. 39.) Sheedy alleged that Wiersema pulled a knife on Shane Shepherd, a Shambaugh employee, and threatened to gut him. Witness testimony starkly conflicted on whether Wiersema actually did so, what happened in the aftermath of this incident, and when the incident occurred.

1. Wiersema's statement to Shepherd

As to what happened on the Concordia Seminary jobsite, Wiersema testified that he was working in a mechanical room with NEDRA coworker Gary Stanton. (Tr. 132–137.) Also present were Shambaugh employees Shepherd and Cody Love. Without prompting and without knowing that Wiersema's wife was having health problems, Shepherd asked Wiersema "how's your wife and my kids?" and told Wiersema he would be over later to have sex with her. Wiersema responded, "say another word and I'm going to knock your teeth down your throat." (Tr. 135–136.)

Shepherd's testimony differed regarding Wiersema's actions in response to Shepherd's incendiary comment. (Tr. 294–298.) Shepherd stated that he and Cody Love walked into the mechanical room as Wiersema was sharpening a work knife approximately 6 to 7 inches in length. Shepherd agreed that he asked Wiersema how his wife and Shepherd's kids were doing, but testified that Wiersema responded by pointing the knife at Shepherd and saying he should fucking gut him. Wiersema denied doing so. (Tr. 136.)

Stanton corroborated Wiersema's account that Shepherd asked Wiersema if he knew who the father of his kids was and Wiersema responded by saying he was going to punch Shepherd's teeth down his throat. (Tr. 62.) He also denied that Wiersema pulled out a knife and showed it to Shepherd and denied that Wiersema told Shepherd he was going to gut him. (Tr. 63, 66.) In contrast, Cody Love testified briefly and corroborated Shepherd's account in most respects, including that Wiersema threatened to gut Shepherd. (Tr. 287–292.)

2. The aftermath of the Wiersema-Shepherd incident

Witness testimony also conflicted concerning whether Sheedy permitted Wiersema to remain on the Concordia Seminary project after the incident with Shepherd.

Wiersema testified he informed Sheedy of the incident later that same day when Sheedy came out to the jobsite. (Tr. 160–161.) Wiersema stated that Sheedy laughed it off and told Wiersema either that he was surprised Wiersema did not hit Shepherd or that Sheedy himself would have hit Shepherd if he were Wiersema. Wiersema also testified that he remained on the Concordia Seminary jobsite for months thereafter, until the end of September. (Tr. 137–138.)

Sheedy testified that Ed Love, Shambaugh's general foreman on the jobsite and Cody Love's father, told him that Cody Love reported Wiersema had pulled a knife on Shepherd and threat-

ened to gut him. Ed Love told Sheedy that either Wiersema had to be removed from the project or NEDRA would be removed from the project. (Tr. 39–40.) Sheedy stated that he then informed Wiersema that he was being removed from the Concordia Seminary project and removed him the same day. (Tr. 41–42, 238–239, 241.)

Stanton corroborated Wiersema's testimony that Sheedy did not remove him from the Concordia Seminary jobsite following this incident. (Tr. 63–64.) In contrast, Ed Love testified that, after learning of Wiersema's threat, Ed Love talked to Sheedy the same day and told him he wanted Wiersema off the project. He also stated that Sheedy removed Wiersema the same day. (Tr. 301–302.) Cody Love stated that Wiersema was removed from the project, either the same day or the next day. (Tr. 288–289, 291–292.)

The one fact the parties do not dispute about the aftermath of the incident is that Sheedy did not discharge Wiersema for the alleged threat. Wiersema continued to work for NEDRA from months until April 1, 2008.

3. The timing of the Wiersema-Shepherd incident

The question of when the confrontation between Wiersema and Shepherd occurred is critical to determining whether Wiersema remained on the Concordia Seminary project after the incident, because Wiersema's timekeeping records from NEDRA establish definitively that he worked on that project until September 21, 2007. (R. Exh. 5.) However, the record does not contain any documentary evidence setting forth the date of the incident.

In addition, and as would be expected for an event which occurred some 7 years ago, witnesses at the hearing struggled to pinpoint the exact timing of the confrontation. Wiersema stated it occurred in the late spring or early summer of 2007. (Tr. 133, 138.) Stanton testified it likely occurred in the spring or summer of 2007, indicating that it was getting warm out or close to it. (Tr. 61.) Shepherd put the timing of this incident as late July or early August. (Tr. 298.)

Sheedy also initially testified that the incident occurred in the spring or summer of 2007. (Tr. 40.) He previously testified under oath in a different legal proceeding that the incident occurred in the summer of 2007. (Tr. 244–246.) However, on the second day of the hearing in this case when he was recalled, Sheedy changed his testimony and stated the incident occurred on September 21, 2007. (Tr. 236-238.)

NEDRA's invoices to the Respondent for the Concordia Seminary project establish that NEDRA worked on the project through December 2007 and again in March 2008 before Wiersema's resignation. (R. Exh. 10.) However, that does not necessarily mean Wiersema was pulled off the project early, because the insulators finished their part of the job before the end of NEDRA's work. (Tr. 291–292.) In addition, a work order amongst the NEDRA invoices indicates that Wiersema returned to the project and worked for 8 hours on March 5, 2008. (R. Exh. 10, p. 23.)

4. Credibility resolution

As the above description makes clear, the credibility resolution regarding what Wiersema said to Shepherd at Concordia Seminary and whether Wiersema remained on the job thereafter is a difficult one, with multiple witnesses on both sides and inconclusive documentary evidence. Moreover, none of the witnesses displayed telltale signs in their demeanors that would call into question the believability of their testimony in this regard.

Ultimately, I conclude that the exact statement Wiersema made is irrelevant to the outcome of this case. However, in the event a credibility determination was required, I find that Wiersema did not threaten to gut Shepherd while holding a knife and remained working on the Concordia Seminary jobsite after the incident.

What is most apparent from the witness testimony is that Wiersema had the most vivid, detailed recall of what occurred, including everything he and Shepherd said to one another and other specifics concerning where Wiersema was and what he was working on at the time. I find the specificity Wiersema provided indicative of reliable, credible testimony.

In contrast, the testimony of Shepherd and Cody Love was sparse and consisted of nothing more than the alleged threat by Wiersema to gut Shepherd, absent any further details. Shepherd also used qualifiers such as "basically," "that's about the gist of it," and "I'm pretty sure." (Tr. 295–296.) Cody Love peppered his testimony with generalities such as "they were going back and forth," then they "were having words," and finally that Shepherd "said something to him." (Tr. 288.) These factors detract from the believability of their testimony.

As to the timing of this incident, witness testimony was consistent that the incident occurred in either the spring or summer of 2007. That means Wiersema remained on the job after the incident, because he did not leave until September 21, 2007. The only witness who stated that the incident occurred on that date was Sheedy. His claim conflicted with what he stated on the first day of the hearing, as well as what he previously stated under oath in a different proceeding. His contention that the incident occurred on September 21 came only following his review of Wiersema's timekeeping records from NEDRA, which the Respondent had subpoenaed. (Tr. 238.) Accordingly, I do not credit Sheedy's testimony.

While the Respondent makes much of the fact that September 21 fell into the technical definition of summer in 2007, I conclude it is doubtful, as a matter of logic, that Sheedy, or any other witness, would recall and testify that the incident occurred in the summer, much less the early spring, had it happened on September 21.[6] I also note that the Respondent's counsel, on direct examination of Shepherd, Ed Love, and Cody Love, did not ask any of the three witnesses an open ended question concerning the timing of the incident, instead directing them to 2007 or the summer of 2007. (Tr. 288, 295, 300.)

Finally, Wiersema's return to the project in March 2008 is inconsistent with the claim that he was permanently removed on September 21, 2007.

[6] I take judicial notice of the fact that the autumnal equinox, or first day of fall, in 2007 occurred on September 23. *Earth's Seasons*, U.S. NAVAL OBSERVATORY, NAVAL OCEANOGRAPHY PORTAL, http://www.usno.navy.mil/USNO/astronomical-applications/data-services/earth-seasons/?searchterm=solstices (last visited Aug. 25, 2015).

For all these reasons, I credit Wiersema's testimony regarding what he said to Shepherd, as well as that he remained working on the Concordia Seminary job thereafter.[7]

Analysis

III. THE 8(A)(3) SALTING ALLEGATIONS

In *FES*, 331 NLRB 9 (2000), enfd. 301 F.3d 83 (3d Cir. 2002), the Board set forth its framework for analyzing refusal to hire allegations. Pursuant to that framework, the General Counsel must, under the allocation of burdens set forth in *Wright Line*, 251 NLRB 1083, enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), first show that: (1) the Respondent was hiring or had concrete plans to hire; (2) applicants had the experience or training relevant to the announced or generally known requirements of the positions for hire; and (3) antiunion animus contributed to the decision not to hire the applicants. If the General Counsel makes this initial showing, the burden shifts to the Respondent to demonstrate that it would not have hired the applicants even in the absence of their union activity.

Subsequently, in *Toering Elec. Co.*, 351 NLRB 225 (2007), the Board held that, before an employer's motivation for a refusal to hire can be considered, the General Counsel must establish that the job applicant was "genuinely interested in seeking to establish an employment relationship" in order to be considered a Section 2(3) employee entitled to the Act's protections. As yet, the Board has not made explicitly clear what the General Counsel must show to satisfy this burden.

With respect to a refusal to consider for hire allegation, the General Counsel bears the burden of showing that: (1) the Respondent excluded applicants from the hiring process, and (2) antiunion animus contributed to the decision not to consider the applicants for employment. Where this showing is made, the burden shifts to the Respondent to establish that it would not have considered the applicants even in the absence of their union activity or affiliation.

As a preliminary matter, the Respondent does not contest, and the record evidence supports, that Wiersema is a Section 2(3) employee entitled to the Act's protections. Wiersema testified without contradiction that he intended to work for Tradesmen/Shambaugh as long as possible, and his job application to Tradesmen was entered into evidence at the hearing. (Tr. 124–125; R. Exh. 3.) The Respondent presented no evidence calling into doubt that Wiersema's interest in going to work for Tradesmen/Shambaugh was genuine.

In its answer to the complaint, the Respondent also admits that, at certain times since June 2014, it had been hiring or had plans to hire, as well as that it refused to consider for hire or to hire Wiersema. The record evidence confirms this as well. The Respondent hired 10 mechanical insulators, either directly or through Tradesmen, from June 29 to October 27. Sheedy refused to hire Wiersema in June prior to hiring Burdette and thereafter refused to consider him when hiring 9 additional mechanical insulators.

Thus, the only issue in dispute in this case is whether the Respondent's adverse actions were motivated by antiunion animus. The Respondent asserts that it did not consider or hire Wiersema because of the threat he made to Shepherd in the summer of 2007. The General Counsel argues that Wiersema did not engage in that conduct and thus the Respondent's asserted reason for refusing to hire Wiersema is pretextual. If the Respondent's reason is pretextual, the General Counsel has satisfied his *FES*/*Wright Line* burden and the Respondent fails by definition to show that it would have taken the same action for that reason, absent the protected conduct. *Golden State Foods Corp.*, 340 NLRB 382, 385 (2003), citing to *Limestone Apparel Corp.*, 255 NLRB 722 (1981).

Both parties frame this case as being decided by my credibility determination concerning the NEDRA incident in the summer of 2007. I agree that credibility controls here, but not concerning that incident. Even assuming for the sake of argument that Wiersema did, in fact, pull a knife and threaten to gut Shepherd, I conclude that the Respondent did not rely on this reason when refusing to hire Wiersema in June 2014.

I base this conclusion, in part, on the lack of credibility that Sheedy displayed when testifying about the events in late 2013 and 2014. In my view, the most important piece of testimony Sheedy provided came early on the first day of the hearing. Counsel for the General Counsel asked Sheedy whether he told Wiersema about the project manager job posting at EMCOR in February 2014, a critical component to the General Counsel's case. Sheedy emphatically denied that he did so in three, successive questions. (Tr. 43–44.) However, unbeknownst to Sheedy, Wiersema had recorded the phone conversation he had with Sheedy, where Sheedy had done exactly that. Once counsel noted on the record that he intended to impeach Sheedy's denial with the recording, Sheedy interrupted that discussion, without any question posed, and erroneously claimed he had just said "I don't recall." (Tr. 44.)

Thereafter, I observed a significant shift in Sheedy's testimony. Whereas previously he had been forthright and direct in responding to questions, Sheedy subsequently retreated and instead equivocated in his testimony following this exchange. He repeatedly answered questions by stating he did not recall or by qualifying his responses with phrases such as "I may have," "I believe," "possibly," and "something to the effect of." This included when he refused to confirm that he also had sent text messages to Wiersema concerning the EMCOR job posting. (Tr. 50.) It also included his response concerning whether he had told Wiersema, at a restaurant prior to the recorded phone conversation, that he would let Wiersema know if the Respondent had any job openings. (Tr. 239–240.)

The obvious dishonesty in Sheedy's initial denial to a key question—whether he had advised Wiersema of a job opening with the Respondent's parent company, despite claiming that Wiersema was violent and unfit for employment—coupled with his hedging of responses thereafter, calls into question the credibility of his entire testimony.

The conclusion that Sheedy did not rely on the Concordia

[7] In making this determination, I do not rely on the testimony of NEDRA owner Michael Cox. (Tr. 141-157.) Although Cox stated he was unaware of Wiersema being removed from the Concordia Seminary jobsite and should have been told if this happened, he also testified that he spent 60 to 70 percent of his work time at a different, concurrent project in Lima, Ohio, and was not always brought up to date on the day-to-day operations at Concordia Seminary. (Tr. 141, 145–146.)

Seminary incident when refusing to hire Wiersema is further supported by established and admitted facts, reasonable inferences from the record as a whole, and the inherent probability of Sheedy's claim. *Daikichi Sushi*, 335 NLRB 622, 623 (2001). The Respondent forcefully argues that Wiersema's act of violence in the workplace at NEDRA precluded him from employment. Yet, the parties do not dispute that Sheedy did not discharge Wiersema after the alleged incident occurred. Irrespective of whether or not he was moved to another jobsite, Wiersema continued to work for NEDRA for at least another 6 months. An incident which did not warrant Wiersema's termination when it occurred cannot be a credible ban to his hiring some 7 years later.

Furthermore, had Wiersema's prior conduct excluded him from employment with the Respondent, I find it improbable that Sheedy would repeatedly express his willingness to help Wiersema get a job there. In late 2013, Sheedy told Wiersema he would let him know if Shambaugh had any job openings. Then shortly thereafter in February 2014, Sheedy called Wiersema to let him know of a specific job opening at EMCOR. This conduct cannot be reconciled with Sheedy's claim that he could not employ Wiersema due to his prior threat.

The Respondent attempts to justify Sheedy's inconsistent conduct by arguing that Wiersema's potential employment with EMCOR differs from his potential employment with Shambaugh, because Ed and Cody Love (but not Shepherd) still worked in the Respondent's insulation division at the time and the Respondent maintains an antiviolence policy. (R. Exh. 8.) I do not agree. If Sheedy truly were concerned that Wiersema would become violent on the job again, that concern is not alleviated in the slightest by the fact that his potential coworkers at EMCOR would be unaware he previously pulled a knife on Shepherd or that EMCOR may not have a formal antiviolence policy.

The Respondent also suggests that Wiersema, then unsatisfied with his employment at the Union, was hounding Sheedy about job openings. If this was the case, Sheedy simply could have played along, then not advised Wiersema of any openings as they became available. Instead, Sheedy picked up the phone and let Wiersema know of the EMCOR opening the same day it was posted.

Finally, the sequence of events between when Sheedy informed Wiersema of the EMCOR job opening in February 2014 and Sheedy's refusal to hire Wiersema in June 2014 is eye opening. The only intervening events during this time period were Wiersema's participation in bannering from March to July 2014 at the Respondent's fabrication shop and headquarters, as well as his solicitation of signatures from the Respondent's insulators on authorization cards. The Respondent was aware of these activities. Prior to the start of the bannering, Sheedy and Wiersema had remained in regular contact and, just a couple of weeks earlier, Sheedy had advised Wiersema of the EMCOR job opening. However, Sheedy ceased communicating with Wiersema after the bannering began. Only 4 months after suggesting he try to go to work for EMCOR, Sheedy then refused to hire Wiersema in June 2014 while bannering continued.

For all these reasons, I do not credit Sheedy's testimony that he refused to hire Wiersema because of the 2007 incident at NEDRA. I find the Respondent's asserted reason for not considering Wiersema for hire and not hiring Wiersema to be pretextual and thus sufficient to demonstrate the Respondent's antiunion animus. Accordingly, the General Counsel has satisfied his *FES/Wright Line* burden and the Respondent cannot meet its shifting burden. The Respondent's refusal to hire Wiersema and refusal to consider Wiersema for hire violate Section 8(a)(3).[8]

IV. THE 8(A)(1) INTERROGATION ALLEGATIONS

An unlawful interrogation is one which reasonably tends to restrain, coerce, or interfere with rights guaranteed by the Act, under the totality of the circumstances. *Rossmore House*, 269 NLRB 1176, 1178 fn. 20 (1984), affd. sub nom *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). The test is an objective one that does not rely on the subjective aspect of whether the employee was, in fact, intimidated. *Multi-Ad Services*, 331 NLRB 1226, 1227–1228 (2000), enfd. 255 F.3d 363 (7th Cir. 2001). The questioning of job applicants concerning their union membership or sympathies long has constituted an unlawful interrogation. See, e.g., *Facchina Construction Co., Inc.*, 343 NLRB 886, 886 (2004); *Zarcon, Inc.*, 340 NLRB 1222, 1222 (2003). The Board recognizes that, under the totality of the circumstances test, an applicant may understandably fear that any answer he might give to questions about union sentiments posed in a job interview may well affect job prospects. *Active Transportation*, 296 NLRB 431, 431 fn. 3 (1989).

In this case, the General Counsel's complaint alleges two violations of Section 8(a)(1), premised on Sheedy's text messages to Koontz on September 18. During that exchange, Sheedy twice asked Koontz if he was still in the Union, following Koontz's inquiry about working for the Respondent. After Koontz repeatedly denied being in the Union, Sheedy then asked Koontz for papers confirming he had been expelled from the Union. His inquiries sought to confirm that Koontz was not a member of the Union and had nothing to do with Koontz's ability, skill, productivity, and reliability as an employee. Sheedy was the Respondent's supervisor in charge of hiring insulators and his conduct was not isolated, as it came in close

[8] I likewise reject the Respondent's argument that its history of being a pro-union employer prevents a finding of animus. This argument is premised, in part, on the Respondent having several collective bargaining agreements with other unions. (Tr. 253–255.) However, the fact that an employer has some union employees does not prevent it from possessing animus against the possibility of having more unionized employees. *E & L Transport Co.*, 315 NLRB 303, 308 (1994). The argument also is based on what Meyer described as his pro-union activities, including his support of common (or prevailing) wage settings in Indiana, his opposition to the Indiana right-to-work law, and his membership in a building trades and union cooperative designed to develop relationships between contractors and unions. (Tr. 255–263.) This history does not foreclose a finding of animus as to the narrowly tailored question of the Respondent's hiring practices when it was directly faced with Union bannering and the beginnings of an active organizing campaign. *J.E. Merit Constructors*, 302 NLRB 301, 304 (1991).

proximity to his unlawful refusal to hire Wiersema. Thus, the questions constitute an unlawful interrogation.

The Respondent argues that Sheedy's statements did not violate the Act, because Sheedy ultimately offered Koontz a job 4 days later. However, questioning a job applicant about his union membership is inherently coercive and unlawful, even when the applicant is hired. *M.J. Mechanical Services, Inc.*, 324 NLRB 812, 812–813 (1997).

The Respondent also suggested at the hearing that Sheedy was motivated to ask Koontz these questions, because the Union previously had sued two members who went to work for a nonunion contractor. (Tr. 242–244; R. Exhs. 6 and 7.) Of course, Sheedy made no mention of this motivation in his texts with Koontz. In any event, the Board specifically rejected this defense in *M.J. Mechanical*, supra. Such questions, standing alone, do not serve as a reminder that the applicant could be fined or disciplined because he was employed by a nonunion employer. Moreover, facing union discipline is the applicant's, not the prospective employer's, concern.

I likewise find no merit to the Respondent's contention that Sheedy's questioning was lawful, because Koontz did not write his texts and had no intention of going to work for the Respondent. Certainly Koontz could not have felt threatened about his job prospects, since he did not intend to go to work for the Respondent. Nonetheless, Sheedy's statements must be evaluated objectively to determine if they reasonably tend to coerce a job applicant, not subjectively based upon Koontz's reaction. No question exists that Sheedy's questions are objectively coercive.

Under the totality of the circumstances, Sheedy's text messages to Koontz constituted unlawful interrogations and violated Section 8(a)(1) as alleged in the complaint.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The International Association of Heat and Frost Insulators and Allied Workers, Local 41, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has violated Section 8(a)(1) by the following conduct:

(a) On September 18, 2014, interrogating applicants for employment about their union membership, activities, and sympathies; and

(b) On September 18, 2014, requiring applicants for employment to provide written evidence of their withdrawal from the Union in order to receive consideration for employment.

4. The Respondent has violated Section 8(a)(3) and (1) of the Act by refusing to hire Wiersema on about June 24, 2014, and thereafter refusing to consider Wiersema for hire.

5. The above unfair labor practices affect commerce within the meaning of Section 2(2), (6), and (7) of the Act.

REMEDY

Having found that the Respondent engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. In particular, I shall order the Respondent to offer Ryan Wiersema instatement to the position for which he applied or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges he would have enjoyed absent the discrimination against him. Further, I shall order the Respondent to make Wiersema whole for any loss of earnings and other benefits suffered for the period Wiersema would have worked but for the unlawful discrimination against him. I also shall order the Respondent to remove from its files any references to the unlawful refusal to hire Wiersema or consider him for hire and, within 3 days thereafter, notify him in writing that this has been done and that this unlawful conduct will not be used against him in any way.

The duration of the backpay period shall be determined in accordance with *Oil Capitol Sheet Metal, Inc.*, 349 NLRB 1348 (2007), pet. for review dismissed 561 F.3d 497 (D.C. Cir. 2009). Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). In addition, the Respondent must compensate Wiersema for the adverse tax consequences, if any, of receiving a lump-sum backpay award and file a report with the Social Security Administration allocating the backpay award to appropriate calendar quarters. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014). Although this order provides for instatement, the instatement award is subject to defeasance if, at the compliance stage, the General Counsel fails to carry his burden of establishing that the discriminatee would still be employed if he had not been a victim of discrimination. *Oil Capitol Sheet Metal*, 349 NLRB at 1354.[9]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The Respondent, Shambaugh and Son, L.P., Fort Wayne, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating applicants for employment about their union membership, activities, and sympathies.

(b) Requiring applicants for employment to provide written evidence of their withdrawal from the Union in order to receive consideration for employment.

(c) Refusing to hire, or to consider for hire, applicants for

[9] The General Counsel's complaint sought a requirement, as part of the remedy, that Wiersema be reimbursed for search for work and work-related expenses, without regard to whether interim earnings are in excess of these expenses. Under extant Board law, those expenses are considered an offset to interim earnings. In this case and others, the General Counsel is seeking a change in Board law. Such a change must come from the Board, not an administrative law judge. The Board has yet to resolve this issue. See *Katch Kan USA, LLC*, 362 NLRB No. 162, slip op. at 1 fn. 2 (2015). Accordingly, I decline to include the requested remedy in my recommended order.

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

employment because of their union or other protected, concerted activities.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Ryan Wiersema employment in the position in which he would have been hired in the absence of the discrimination against him or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges he would have enjoyed.

(b)Make Wiersema whole for any loss of earnings and other benefits suffered for the period where Wiersema would have worked but for the unlawful discrimination against him, in the manner set forth in the remedy section of this decision.

(c) Compensate Wiersema for the adverse tax consequences, if any, of receiving a lump sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

(d)Within 14 days from the date of this Order, remove from its files any references to the unlawful refusal to hire Wiersema or consider him for hire and, within 3 days thereafter, notify him in writing that this had been done and that this unlawful conduct will not be used against him in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Fort Wayne, Indiana, copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 days in conspicuous places including all places were notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 24, 2014.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Regional Director attesting to the steps the Respondent has taken to comply.

Dated, Washington, D.C., September 17, 2015.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT ask job applicants about their union membership, activities, or sympathies.

WE WILL NOT require job applicants to provide written evidence of their withdrawal from the International Association of Heat and Frost Insulators and Allied Workers, Local 41 (the Union), or any other union, in order to receive consideration for employment.

WE WILL NOT refuse to hire, or to consider for hire, job applicants, because of their union or other protected, concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Ryan Wiersema the job he applied for in June 2014, or a substantially equivalent position if that job no longer exists, without prejudice to his seniority or any other rights or privileges he would have enjoyed from the date of his hire.

WE WILL make Ryan Wiersema whole for any loss of earnings and other benefits suffered as a result of our unlawful refusal to hire him.

WE WILL compensate Ryan Wiersema for the adverse tax consequences, if any, of receiving a lump-sum backpay award and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

WE WILL, within 14 days from the date of this Order, remove from our files all references to our unlawful refusal to hire Ryan Wiersema, or consider him for hire, and, within 3 days thereafter, WE WILL notify him in writing that this has been done and that our unlawful conduct will not be used against him in any way.

SHAMBAUGH AND SON, L.P.

[11] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/25–CA–141001 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.